ABDUL KARIM AYOB

v.

KUMPULAN KARANGKRAF SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[SUIT NO: S2-23-17-1996]
24 AUGUST 1999

TORT: *Defamation - Statements published in weekly magazine - Whether defamatory of plaintiff - Whether made by plaintiff*

The plaintiff sued the defendants for defamatory statements allegedly made by the plaintiff and published in an article in a Malay weekly magazine known as "Mingguan Wanita". The plaintiff also sued the defendants for enclosing a photograph of the plaintiff in full fireman's uniform with a defamatory caption of him. It was the plaintiff's case that the statements made referred to the plaintiff as "miang" which meant lustful.

The plaintiff testified that although he had arranged an earlier interview with the 4th defendant, the telephone interview on 16 April 1994 made at about 3 pm by the 4th defendant wherein the plaintiff was supposed to have made the impugned statements did not take place. This was because the plaintiff was not on duty at the fire-station that the call was supposed to have been made. This was confirmed by the plaintiff's witness who was the officer-in-charge at the station in question.

Held:

[1] There was evidence to show that the plaintiff was not on duty at the fire-station that the 4th defendant was allegedly to have made the call to the plaintiff. The plaintiff was a witness of truth. He gave his evidence with utmost clarity. Thus, if the 4th defendant did telephone the said station on 16 April 1994, then obviously it was not to the plaintiff that he spoke to. In the absence of any evidence that the plaintiff had any enemies who wanted to impersonate him, it was the court's finding that the 4th defendant did not make the call. Having made the earlier visit, the 4th defendant must have assumed that the plaintiff would still be at the said station and on that assumption concocted the alleged conversation. However, he used the photograph taken at the earlier interview.

[1a] As for the photograph, the plaintiff's denial that he authorised the taking of the photograph and that he was unaware that it was taken was rejected. He must have been under the mistaken belief that if he agreed that the photograph was taken with his consent, then it would be an admission that he gave the interview on 16 April 1994.

[2] The meaning that ought to be attributed to "miang" is what the ordinary man in the street would think it means. The ordinary man in the street would immediately connote "miang" as relating to a person lusting for sexual favours or sexual intercourse. The derogatory connotation can well be imputed by the fact that it also refers to "being on heat". It is an accepted fact that only animals go on heat at certain times. The connotation therefore is that when a person is referred to as "miang" he is lustful as an animal with the unrestrained urge for a sexual encounter.

[3] An ordinary reader of the said magazine upon coming across the said article would easily infer that the plaintiff although a high ranking public servant in uniform was by nature lustful of women, that he held the view that such a feeling was harmless, that it was his favourite pastime to tease women and that he felt that the more he teased women the more they liked it and that it would be unmanly for a male not to be lustful. By referring to the plaintiff as "miang", the defendants who did not deny the publication ought to be found liable as that reference was defamatory of him.

[4] In an action for defamation the assessment of general damages does not depend on any legal precept. However, the court will consider the conduct of the plaintiff and the defendants, the plaintiff's position and standing, the nature of the libel, the extent of the publication and the refusal of an apology. In addition, there must be consideration for mental distress, hurt, anxiety and distress caused to the plaintiff as a result of the publication. The fact that the plaintiff was a public servant was also taken into consideration.

[Damages in the sum of RM100,000 with interest from date of publication to date of judgment and costs.]

For the plaintiff - Dennis Appaduray (R Rajasingam with him; M/s Sidek Teoh Wong & Dennis

For the 1st, 2nd, 4th, 5th and 6th defendants - Haris Ibrahim (Nurul Akmar Omar with him); M/s Adam & Co

Other source(s) referred to:
Kursus Lengkap
The Chambers Dictionary 20th Century

Reported by Usha Thiagarajah

JUDGMENT

RK Nathan J:

The Claim

The plaintiff claims against the 1st, 2nd, 4th, 5th and 6th defendants *inter alia* (i) general damages, (ii) an apology by way of publication, (iii) a written undertaking not to publish any similar article against the plaintiff, (iv) costs, in respect of an article (the said article) appearing in a Malay weekly magazine known as "Mingguan Wanita" (the said magazine) for the week commencing 26 August - 2 September 1994 under the heading "Suami tebar cinta macam menebar jala" where it is alleged that the 1st defendant falsely and maliciously printed and published statements allegedly made by the plaintiff concerning the said article and further enclosing a photograph of the plaintiff in full fireman's uniform with a caption "Encik Karim - sekadar usik-usik apa salahnya".

Findings Of The Court

The 1st defendant was at the material time the owner of the said magazine with the 2nd defendant, the publisher. The 4th defendant was also at all material times the writer of the said article in the said magazine. The 5th defendant was the photographer, and the 6th defendant, the printer of the said magazine.

Facts

Some time in or about the month of December 1993, or early January 1994, the 4th defendant, together with another journalist/reporter and a photographer from "Majalah Pentas Dunia" went to the Balai Bomba Petaling Jaya to write an article about the lives of single firemen. The plaintiff, who at that material time was the Penolong Pegawai Penjaga Bomba, was instructed by his superior, Haji Salam bin Jumiran (PW5), to meet them and arrange for the said interview with the firemen.

In the course of this meeting, which was held in the plaintiff's office/room a photograph of the plaintiff in uniform was taken. The plaintiff contends that the said photograph was taken without his knowledge and permission. But more on this later.

The 4th defendant testified that on 16 April 1994 at about 3.00 p.m. he again interviewed the plaintiff at the Balai Bomba Petaling Jaya over the telephone. However, it is in evidence that on the said date and time the plaintiff was not in the Balai Bomba Petaling Jaya because as of 15 January 1994 he was working at Balai Bomba Pelabuhan Kelang. He also testified that on that date he was on duty at Pelabuhan Kelang from 0800 hours to 1615 hours and after that he was "on-call" duty. He also confirmed that on the said date he never received any call from any journalist/reporter. The plaintiff called as his witness, PW5, the officer-in-charge of the Balai Bomba Petaling Jaya. He confirmed after referring to the official letter dated 24 December 1993 that the plaintiff was indeed transferred to Balai Bomba Pelabuhan Kelang as of 15 January 1994. I have watched the plaintiff testify. I find him a witness of truth. He gave his evidence with utmost clarity although at times he became overly emotional because of the reaction of his wife to the said publication. It is therefore my finding that if at all the 4th defendant (DW2) telephoned the Balai Bomba Petaling Jaya on 16 April 1994 then obviously it was not the plaintiff with whom he spoke. In the absence of any evidence before me that the plaintiff had enemies who wanted to impersonate him, it is my finding that the 4th defendant did not make that call. Having made the earlier visit, he must have assumed that the plaintiff would still be at the Petaling Jaya station and on that assumption, the 4th defendant must have concocted the alleged conversation. However, he used the photograph taken earlier in the article. As for the photograph, whilst the plaintiff vehemently denies that he authorised the taking of the photograph that appeared with the article, and pleaded that he was even unaware that it was taken, I reject this part of the plaintiff's evidence. He must be under the mistaken belief that if he agreed that the photograph was taken with his consent, it must be his fear that it would mean an admission that he gave the interview on 16 April 1994. It is important to note that it was this alleged interview that gave rise to the complaint of the plaintiff resulting in this suit. In their 26 August – 2 September 1994 issue of "Mingguan Wanita" the defendants headlined the impugned article which when translated reads as follows:

> Husband spreads love like casting a net.

The translation of the impugned article as pleaded reads as follows:

> The issue of 'miang' or otherwise depends on the individual. It is not the gender that differentiates the action. Personally I can say that men being 'miang' has its charm. What more if a man does it, it's okay. If a woman is 'miang', her behaviour is really bad, narrated Encik Karim with a smile.

It continues:

> Personally I can say that men being 'miang' has its charm ... if a man does it, it's okay. If a woman is 'miang', her behaviour is really bad,

Further, the plaintiff is quoted as having said:

> If a man is not 'miang', he is not a man. Don't misjudge, men being 'miang' has its place. Just teasing, to look at a woman's reaction, if she is angry it means she likes it.
>
> The attribute of a man depends on whether he is 'miang' or otherwise.
>
> The reaction of being angry when purposely teased shows that the woman likes it.
>
> After all men being 'miang' is harmless, merely to pass the time. As for me, if someone says that man is 'miang', I would only smile.
>
> "Actually, men being 'miang' is caused by women themselves. By clapping one hand there will be no sound. Isn't that so?" asked Encik Karim again.

It is the plaintiff's case that in its natural and ordinary meaning the passages quoted above meant that the plaintiff encouraged "miang" among men, and further that the plaintiff admits to a feeling of "miang" towards women.

It is obvious that the alleged passage, attributed to the plaintiff as having been spoken on 16 April 1994, is the creation of the 4th defendant's own fertile imagination. He had embarked, with a journalistic licence into the realm of fiction, on a flight of fancy.

It would seem that the central word causing embarrassment to the plaintiff is "miang". The plaintiff contended that "miang" meant lustful. The defendant called as its expert witness, a professor from the University of Malaya attached to the Malay Language and Literature, to give the meaning attributed to "miang". To my mind, the meaning that ought to be attributed to the word "miang" is not what a professor of languages ensconced in his air-conditioned room, thinks it means, but what the ordinary man in the street would think it means. The *Kursus Lengkap* defines "miang" as "fine hairs on bamboo shoots, etc. that cause itch"; "on heat"; "lustful". The *Chambers Dictionary 20th Century* defines amongst others, "itch" as "a constant teasing desire". The ordinary man-in-the-street would in my view immediately connote "miang" as relating to a person lusting for sexual favours or sexual intercourse. The word "miang" must be given its natural and ordinary meaning. The derogatory connotation can well be imputed by the fact that it also refers to "being on heat". It is an accepted fact that only animals go on heat at certain times. The connotation therefore is that when a person is referred to as "miang" he is as lustful as an animal with the unrestrained urge for a sexual encounter.

In so far as the 5th defendant is concerned, there is clear evidence that at the material time, when the alleged photograph as shown in the magazine, was taken, she was not with the 1st defendant, as she was only employed with the 1st defendant as of 8 August 1994. Just because her name appears as the photographer, does not mean that she was the photographer. The 1st defendant

has to answer why her name appeared and he has failed to do so. The claim is therefore dismissed as against the 5th defendant with costs.

It is my finding that an ordinary reader of the said magazine upon coming across the said article would easily infer that the plaintiff, although a high ranking public servant in uniform, is by nature lustful of women, that he holds the view that such a feeling is harmless, that it is his favourite pastime to tease women and that he feels that the more he teases women the more they like it and that it would be unmanly for a male not to be lustful. I am therefore satisfied that by referring to the plaintiff as "miang" the defendants, who do not deny the publication (except the 5th defendant), ought to be found liable as clearly in my view the reference to the plaintiff is defamatory of him.

Quantum

It is an accepted fact that in an action for defamation the assessment of general damages does not depend on any legal precept. However, in assessing damages the court will consider the conduct of the plaintiff and the defendants, the plaintiff's position and standing, the nature of the libel, the extent of the publication and the refusal of an apology. In addition, there must also be consideration given to the mental distress, hurt, anxiety and distress caused to the plaintiff as a result of the publication. In this case, in addition to the above, I also take into consideration the fact that the plaintiff is a public servant. Public servants are subjected, in so far as their conduct is concerned, to constraint and restraint. Their conduct is expected to be impeccable; their standing in society irreproachable. They are subjected to general orders which guard and guide their conduct throughout their life in service. Therefore when an injustice such as this is beset upon them only the majesty of the law can come to their rescue; and so it shall.

The plaintiff says his rank is equivalent to that of an OCPD (officer-in-charge of police district). Even if this is not true the fact remains that the plaintiff is not an ordinary fireman. I therefore award the plaintiff, having taken into account all facets of the case, damages in the sum of RM100,000 with interest at 4% p.a. from date of publication, that is, 26 August 1994, to date of judgment and costs.

Unfortunately, the plaintiff did not ask for aggravated damages as I would have been inclined to grant the same because of the fictitious concoction of the interview when such an event did not occur at all.